not be plowed from the tracks onto the rest of the street. *Broadway, etc., Ry. Co.* v. *Mayor*, 49 Hun (N. Y.) 126. Sprinkling the tracks with sand may be forbidden. *State, Consolidated Traction Co., Pros.* v. *Elizabeth*, 58 N. J. Law 619. Even in the absence of express regulation street railways are bound to lay rails properly and to keep them in repair, and to avoid obstructing or endangering passage. *Rockwell* v. *Third Ave. Ry. Co.*, 64 Barb. (N. Y.) 438.

The limits of the police power, however, would seem in general to be passed when the ordinances are designed not to protect the public, but to relieve it from such municipal burdens as paving, repairing, and cleaning the streets. Nevertheless, the Illinois decision may, perhaps, meet with approval in sustaining the ordinance requiring the cleaning of the tracks. *Cf. Village of Carthage* v. *Frederick*, 122 N. Y. 268. The court points out that railways are given exceptional privileges in the use of the streets, and furthermore have themselves caused the special need and difficulty of cleaning between the tracks. In a somewhat similar case an ordinance requiring railway companies to sprinkle their tracks was upheld. *City, etc., Ry. Co.* v. *Mayor, etc., of Savannah*, 77 Ga. 731. Any further imposition of burdens is difficult to justify. Some courts, it is true, have supported ordinances similar to that condemned in New Jersey, requiring companies to repair between and about the rails. *City of Harrisburg* v. *Harrisburg P. Ry. Co.*, 1 Pearson (Pa.) 298; see *Memphis, etc., Ry. Co.* v. *State*, 87 Tenn. 746. A New Jersey *dictum* often quoted to the same effect is expressly repudiated by the principal case. The latter seems clearly right in principle. The ordinances in question are intended to shift public burdens, to compel the companies to do something which otherwise the city would have to do, something which would have to be done though the companies were not in existence. They are not measures for public safety and convenience, but devices for revenue purposes. Moreover, it is hard to distinguish them from regulations requiring paving, and the weight of authority is strongly against ordinances of the latter sort. *Kansas City* v. *Corrigan, etc., Ry. Co.*, 86 Mo. 67. It is obviously necessary carefully to distinguish cases where provisions as to paving and repairing are contained in the charter.

CRIMINAL ATTEMPT. — An intended crime may fail of accomplishment, (1) because voluntarily abandoned; (2) because the means used are inadequate; (3) because an unforeseen obstacle intervenes; or (4) because the object upon which it is intended to be committed is not present. In the first three cases, since there is no doubt as to the criminal intent, the only point to be considered is whether the act done is of sufficient importance for the law to notice it — whether it is such as to cause alarm to society. In determining this, both the magnitude of the crime intended and the nearness of the act done to the projected result must be taken into account. When courts arrive at different results upon similar states of fact, it is to be attributed, not to a difference as to the law, but rather to a difference in judgment as to the importance of the act done. Compare *People* v. *Sullivan*, 173 N. Y. 122; *People* v. *Stites*, 75 Cal. 570; *People* v. *Youngs*, 122 Mich. 292.

There is greater difficulty, however, where the object against which the crime is directed is not present. It is generally held that there may be an

attempt to commit larceny though there is no property to steal. *Commonwealth* v. *McDonald*, 5 Cush. (Mass.) 365. On the other hand, text writers seem to agree that if a person shoots at a shadow thinking it to be an enemy, it is not an attempt to murder. See BISHOP, CR. LAW, § 742; WHARTON, CR. LAW, § 186. The reason sometimes given is that the real intent is to shoot at the shadow. As a matter of fact, however, most acts are accompanied by many different intents. The act of shooting involves, among others, intents to aim, to pull the trigger, and to set off the load. In the case just supposed the intent to kill an enemy is no less real than the intent to shoot at the shadow. The person doing the shooting would be very much surprised to be told that he was without the evil intent. See *Rex* v. *Coe*, 6 C. & P. 403. Further, the larceny cases are very difficult to explain unless the necessary intent is regarded as being present. It is believed that the real test should be the same as that in the first three classes of cases already mentioned — namely, whether the act done is of sufficient importance for the law to notice it. By this test, the distinction between putting the hand into an empty pocket or breaking into an empty building with intent to steal, either of which is an attempt, and shooting at a shadow, which is not an attempt, is that in the former cases force is actually brought to bear against the very person or object against which it was intended to be used, while in the latter no force is brought to bear or comes near being brought to bear upon the intended victim. If this explanation be correct, it should follow that if, in the case of shooting at a shadow, the person intended to be injured is near enough to the thing mistaken for him when the shot is fired, an attempt is made out. It was virtually so decided in *People* v. *Lee Kong*, 95 Cal. 666. A recent Missouri case is to be sustained upon the same principle. The prisoner discharged a pistol at a bed upon which he thought the prosecutor was lying. Though the prosecutor was in fact in another part of the house at the time, the defendant was held guilty of an attempt. *State* v. *Mitchell*, 71 S. W. Rep. 175.

DOCTRINE OF LOST GRANT. — The law has always recognized the necessity of allowing the acquisition of an easement by long continued use. At first, immemorial use was held to be necessary and the coronation of Richard I. was taken as the limit of legal memory. See *Angus* v. *Dalton*, 3 Q. B. D. 85. This unsatisfactory rule was later modified by the doctrine of lost grant. By this doctrine all easements are supposed to arise in grant, but if the easement has been used for the period required by the statute of limitations to gain a title to lands by adverse possession, then the use is presumed to have commenced under a valid grant which has since been lost. See *Angus* v. *Dalton*, *supra*. This theory has been a source of considerable confusion in the law, for many courts have treated the lost grant as though it were to some extent a grant in fact. Thus in a recent Virginia decision the court held that the presumption of a grant to the plaintiff of a right of way over the defendant's land might be rebutted by showing that the defendant continually protested against the plaintiff's use and therefore never acquiesced in it. *Reed* v. *Garnett*, 43 S. E. Rep. 182. If the lost grant is considered as a grant in fact, such evidence may well show that no such grant was ever made. But the lost grant is admittedly a fiction, and to be of any value should be treated purely as a presumption of law. *Tracy* v. *Atherton*, 36 Vt. 503; *Reimer* v. *Stuber*, 20 Pa. St. 458.